

# COVID-19: THREE WAYS TO RESHAPE ADVERTISING READINESS AND RE-TUNE MESSAGING IN A PANDEMIC

Date: 23 March 2020

## U.S. Intellectual Property Alert

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"Uncertainty" is undoubtedly the current buzzword. But for the unprecedented and tragic circumstances of COVID-19 under which this buzzword originated, it would be a term that advertisers would normally attach and leverage in hashtags on social media and the other advertising media.

States across the United States are regulating how and where individuals can interact, shop and work. Consumers are engaging with brands under profoundly unique circumstances, and such engagements are primarily digitally. In response, brands, agencies and publishers, must retune their timing, content and delivery of advertising messages. Despite these unprecedented circumstances, multiple industries are seeing increasing consumer engagement -- such as health, medical, business management, beauty and personal care, finance, entertainment and e-learning. In particular, restaurants and retailers need to retune to keep consumers engaged in the shadow of limited delivery and on-line sales only.

Below are 3 ways for brands and agencies to re-cast services and approach consumer engagement.

## 1. HARNESSING IN-FLIGHT MEDIA CAMPAIGNS AND MARKETING INITIATIVES

Brands contemplating cancelling or postponing media campaigns, or agencies grappling with the same as to publishers, should look to the underlying agreements to drive a strategic approach:

- **Review Terms of Existing Agreements for Media Placements.** The immediate response may be to analyze termination rights and, of course, understanding any termination rights and obligations remains critical. Short of termination, however, brands and advertisers may have other options to approach existing campaigns. For example, in both the digital and traditional media space, terms may permit the content of ongoing media campaigns to be modified or replaced before or during media placement. This allows brands to reshape their message to be responsive to current conditions. It may be possible to meet spend commitments by redirecting publication sites and frequencies or replacing the advertisements with revised content. Alternatively, spend brands and agencies may align to defer spend commitments and other campaign obligations due to the inability to meet performance criteria in light of the overtaking of pandemic coverage.
- **The Promise of Force Majeure.** If facing the need to be excused from obligations under a contract – e.g., performance of media or production services, hosting events – review any force majeure provisions to determine if the clause has been triggered and exercised by COVID-19. Many clauses provide some immediate relief from obligations, but such exemptions often have a time limitation and give the parties

options, including termination, at the end of the grace period. For more information on analyzing force majeure clauses click [here](#).

- **Addressing Existing Offers.** For promotions of now-cancelled or postponed events, or promotions or sweepstakes where the prize may not be available due to supply chain restrictions, consider terms of the offers to identify rights to postpone, cancel, or substitute goods or services and how to message that substitution to consumers.
- **New Agreements.** For a new statement of work, master engagement, or insertion order, increased attention should be given to exit and termination strategies, and the flexibility afforded to make nimble adjustments to the ad content. Brands should consider order-specific editorial adjacency guidelines, as permitted under the IAB Standard Terms and Conditions Version 3.0, to avoid, for example, side-by-side placement of a brand's materials promoting its transit services aside content reporting on shelter-in-home mandates. Agencies and publishers should review mechanisms for controlling and effectuating adjacency requirements for these new concerns.

## 2. UPDATING CLEARANCE PROTOCOLS AND OPTIONS TO EXPEDITE REVIEW

With the COVID-19 crisis evolving on an hourly basis, and retailers and service providers moving from in-store consumer engagement to exclusive online or delivery engagement, the ability for brands to explain their revised offerings and remind consumers of the brand's continued presence quickly and easily is critical.

Given the speed at which COVID-19 transformed our day-to-day lives, some brands are receiving unexpected negative press and complaints from consumers when well-meaning messages of unity and adventure, for example, raise eyebrows and negative attention in these times. Advertising and marketing campaigns, collateral, and messaging needs to take into account sensitivities as to how COVID-19 impacts consumers' health, financial stability, and lifestyle.

Companies should include the [Centers for Disease Control \(CDC\) guidelines on prevention](#), including but not limited to, cleaning hands, avoiding close contact, avoid images that touch hands to eyes, nose, and mouth, as part of internal review and clearance protocols as applicable to your business. For businesses staying open or delivering food and packages, ensure that any representations regarding cleaning and safety of locations, hygiene of workers and delivery people are accurate and substantiated.

Options to expedite internal review procedures include:

- For messaging from brand executives, simultaneously pre-clear several variations of statements in different lengths to support different advertising contexts (e.g. articles, social media posts, banner ads) and platforms;
- Regional roll-outs to limit complexities of global clearances and enable swift take-down or modification;
- Repurpose previously cleared content, in whole or part;
- Review existing sponsorship agreements to identify any specific provisions providing for expedited review timelines or virtual sponsor appearances; and
- Limit reliance on third party content requiring separate licensing and clearance efforts.

### 3. MEANINGFUL AND CREATIVE ENGAGEMENT WITH CONSUMERS

Amid countless emails detailing retailers' sanitization efforts and widespread social distancing mandates arises the opportunity for brands to focus on community building efforts in lieu of sales campaigns. While foot traffic at retail locations has all but ceased, demonstrating a brand's commitment to its community and patrons remains possible.

Several brands have led this charge, leveraging their global-mindedness and resources to both assure consumers that the brand's employees' well-being and compensation is being considered and react to consumer needs in these uncertain times. Snapchat, for example, reportedly expedited its "Here for You" feature offering users access to partnered health providers and a dedicated COVID-19 section to share updates and safety recommendations. Leveraging market reach to educate consumers has long been a critical brand reaction to crises. In a well-publicized move, Reddit co-founder, Alexis Ohanian, placed a billboard in Times Square to educate consumers on the importance of staying home to #FlattenTheCurve.

#### Responding in a Crisis

Despite the best planning, brands sometimes are faced with a digital crisis. For more information on planning and responding to digital crises, visit our Digital Crisis Planning & Response webpage, including our recent COVID-19 related program recording [here](#).

#### Retaining a Sense of Normalcy and Looking Forward

Brand sensitivity does not have to equate to persistent seriousness. As many brands have shown, authenticity and humanity in marketing response always resonates with consumers.

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